

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

LEVI STRAUSS & CO.,

Plaintiff,

v.

DEUS EX MACHINA MOTOR CYCLES  
PTY LTD.,

Defendant.

Case No.: 13-cv-04184 JSC

**PRETRIAL ORDER**

Following the Case Management Conference held on February 6, 2014, IT IS  
HEREBY ORDERED THAT:

**I. CASE MANAGEMENT SCHEDULE**

Deadline to Amend Pleadings:	May 30, 2014
Fact Discovery Cut-Off:	June 30, 2014
Deadline for Expert Disclosures:	August 15, 2014
Deadline for Expert Rebuttal Disclosures:	September 12, 2014
Expert Discovery Cut-Off:	October 31, 2014
Deadline for Hearing Dispositive Motions:	December 18, 2014

1 The Court also refers the parties to the Court's ADR program for mediation to occur  
2 within the next 60 days or as soon thereafter as possible. The parties shall appear for a further  
3 Case Management Conference on May 8, 2014, at 1:30 p.m., in Courtroom F, 15th Floor,  
4 U.S. District Court, 450 Golden Gate Ave., San Francisco, California. Counsel may contact  
5 Court Call at 1-888-882-6878 to make arrangements to appear by telephone.

6 **II. TRIAL DATE**

7 A. Jury trial will begin on March 2, 2015, at 8:30 a.m., in Courtroom F, 15th Floor,  
8 U.S. District Court, 450 Golden Gate, San Francisco, California.

9 B. The Court is expecting the length of the trial to not exceed four court days.

10 **III. PRETRIAL CONFERENCE**

11 A Final Pretrial Conference shall be held on February 12, 2015, at 2:00 p.m., in  
12 Courtroom F, 15th Floor. Lead trial counsel for each party shall attend.

13 A. At least seven days prior to date of the Final Pretrial Conference the parties  
14 shall do the following:

15 1. In lieu of preparing a Joint Pretrial Conference Statement, the parties  
16 shall meet and confer in person, and then prepare and file a jointly signed Proposed Final  
17 Pretrial Order that contains: (a) a brief description of the substance of claims and defenses  
18 which remain to be decided; (b) a statement of all relief sought; (c) all stipulated facts; (d) a  
19 joint exhibit list in numerical order, including a brief description of the exhibit and Bates  
20 numbers, a blank column for when it will be offered into evidence, a blank column for when  
21 it may be received into evidence, and a blank column for any limitations on its use; and (e)  
22 each party's separate witness list for its case-in-chief witnesses (including those appearing by  
23 deposition), including, for all such witnesses (other than party plaintiffs or defendants), a  
24 short statement of the substance of his/her testimony and, separately, what, if any, non-  
25 cumulative testimony the witness will offer. For each witness, state an hour/minute time  
26 estimate for the direct examination (only). Items (d) and (e) should be submitted as  
27 appendices to the proposed order. The proposed order should also state which issues, if any,  
28 are for the Court to decide, rather than the jury.

2. File a joint set of proposed instructions on substantive issues of law arranged in a logical sequence. If undisputed, an instruction shall be identified as “Stipulated Instruction No. \_\_\_\_ Re \_\_\_\_\_,” with the blanks filled in as appropriate. If disputed, each version of the instruction shall be inserted together, back to back, in their logical place in the overall sequence. Each such disputed instruction shall be identified as, for example, “Disputed Instruction No. \_\_\_\_ Re \_\_\_\_\_ Offered by \_\_\_\_\_,” with the blanks filled in as appropriate. All disputed versions of the same basic instruction shall bear the same number. Any modifications to a form instruction must be plainly identified. If a party does not have a counter version and simply contends that no such instruction in any version should be given, then that party should so state (and explain why) on a separate page inserted in lieu of an alternate version. With respect to form preliminary instructions, general instructions, or concluding instructions, please simply cite to the numbers of the requested instructions in the current edition of the Ninth Circuit Model Jury Instructions. Other than citing the numbers, the parties shall not include preliminary, general, or concluding instructions in the packet.

3. File a separate memorandum of law in support of each party’s disputed instructions, if any, organized by instruction number.

4. File a joint set of proposed voir dire questions supplemented as necessary by separate requests.

5. File trial briefs on any controlling issues of law.

6. File proposed verdict forms, joint or separate.

7. File and serve any objections to exhibits.

8. File a joint simplified Statement of the Case to be read to the jury during voir dire as part of the proposed jury instructions. Unless the case is extremely complex, this statement should not exceed one page.

B. Any motions in limine shall be submitted as follows: at least twenty (20) calendar days before the conference, the moving party shall serve, but not file, the opening brief. At least ten (10) calendar days before the conference, the responding party shall serve

1 the opposition. There will be no reply. When the oppositions are received, the moving party  
2 should collate the motion and the opposition together, back-to-back, and then file the paired  
3 sets at least seven (7) calendar days before the conference. Each motion should be presented  
4 in a separate memorandum and properly identified, for example, "Plaintiff's Motion in  
5 Limine No. 1 to Exclude . . . ." Each party is limited to bringing five motions in limine. The  
6 parties are encouraged to stipulate where possible, for example, as to the exclusion of  
7 witnesses from the courtroom. Each motion should address a single, separate topic, and  
8 contain no more than seven pages of briefing per side.

9 C. Hard-copy courtesy copies of the above documents shall be delivered by  
10 NOON the day after filing. The Joint Proposed Final Pretrial Order, jury instructions, and  
11 verdict form shall be submitted via e-mail as attachments to JSCpo@cand.uscourts.gov. The  
12 Court requests that all hard-copy submissions be three-hole-punched.

#### 13 **IV. PRETRIAL ARRANGEMENTS**

14 A. Should a daily transcript and/or real-time reporting be desired, the parties shall  
15 make arrangements with Debra Campbell, Supervisor of the Court Reporting Services, at  
16 (415) 522-2079, at least ten (10) calendar days prior to the trial date.

17 B. During trial, counsel may wish to use overhead projectors, laser-disk/computer  
18 graphics, poster blow-ups, models, or specimens of devices. Equipment should be shared by  
19 all counsel to the maximum extent possible. The Court provides no equipment other than an  
20 easel. The United States Marshal requires a court order to allow equipment into the  
21 courthouse. For electronic equipment, parties should be prepared to maintain the equipment  
22 or have a technician handy at all times. The parties shall tape extension cords to the carpet for  
23 safety. The parties may work with the deputy clerk, Ada Means (415-522-2015), on all  
24 courtroom-layout issues.

#### 25 **SCHEDULING**

26 Trial will be conducted from 8:30 a.m. to 2:30 or 3:00 p.m., depending on the  
27 availability of witnesses, Monday through Friday. Counsel must arrive by 8:15 a.m., or earlier  
28

1 as needed, for any matters to be heard out of the presence of the jury. The jury will be called  
2 at 8:30 a.m.

### 3 **THE JURY**

4 In civil cases, there are no alternate jurors and the jury is selected as follows:  
5 Eighteen to twenty jurors are called to fill the jury box and the row in front of the bar, and are  
6 given numbers (1 through 18). The remaining potential jurors will be seated in the public  
7 benches. Hardship excuses will usually be considered at this point. The Court will then ask  
8 questions of those in the box and in the front of the bar. Counsel may then conduct a limited  
9 voir dire. Challenges for cause will then be addressed out of the presence of the potential  
10 jurors. The Court will consider whether to fill in the seats of the stricken jurors. If so,  
11 questions will be asked of the additional jurors and cause motions as to them will be  
12 considered. After a short recess, each side may exercise its allotment of peremptory  
13 challenges out of the presence of the potential jurors. The eight (or such other size as will  
14 constitute the jury) surviving the challenge process with the lowest numbers become the final  
15 jury. For example, if the plaintiff strikes 1, 5, and 7 and the defendant strikes 2, 4, and 9, then  
16 3, 6, 8, 10, 11, 12, 13, and 14 become the final jury. If more (or fewer) than eight jurors are to  
17 be seated, then the starting number will be adjusted. So too if more than a total of six  
18 peremptories are allowed. Once the jury selection is completed, the jurors' names will be read  
19 again and they will be seated in the jury box and sworn. The Court may alter this procedure in  
20 its discretion and after consultation with the parties.

### 21 **WITNESSES**

22 At the close of each trial day, all counsel shall exchange a list of witnesses for the  
23 next two full court days and the exhibits that will be used during direct examination (other  
24 than for impeachment of an adverse witness). Within 24 hours of such notice, all other  
25 counsel shall provide any objections to such exhibits and shall provide a list of all exhibits to  
26 be used with the same witness on cross-examination (other than for impeachment). The first  
27 notice shall be exchanged prior to the first day of trial. All such notices shall be provided in  
28 writing.

## EXHIBITS

A. Prior to the Final Pretrial Conference, counsel must meet and confer in person to consider all exhibit numbers and objections and to eliminate duplicate exhibits and confusion over the precise exhibit.

B. Use numbers only, not letters, for exhibits, preferably the same numbers as were used in depositions. Blocks of numbers should be assigned to fit the need of the case (e.g., Plaintiff has 1 to 100, Defendant A has 101 to 200, Defendant B has 201 to 300, etc.). A single exhibit should be marked only once. If the plaintiff has marked an exhibit, then the defendant should not re-mark the exact document with another number. Different versions of the same document, e.g., a copy with additional handwriting, must be treated as different exhibits with different numbers. To avoid any party claiming “ownership” of an exhibit, all exhibits shall be marked and referred to as “Trial Exhibit No. \_\_\_\_\_,” not as “Plaintiff’s Exhibit” or “Defendant’s Exhibit.”

C. The exhibit tag shall be in the following form:

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**TRIAL EXHIBIT 100**

Case No. \_\_\_\_\_

Date Entered \_\_\_\_\_

By \_\_\_\_\_

Deputy Clerk

Counsel preferably will make the tag up in a color that will stand out (yet still allow for photocopying), but that is not essential. Place the tag on or near the lower right-hand corner or, if a photograph, on the back. Counsel should fill in the tag but leave the last two spaces blank. The parties must jointly prepare a single set of all trial exhibits that will be the official

1 record set to be used with the witnesses and on appeal. Each exhibit must be tagged, three-  
2 hole-punched, separated with a label divider identifying the exhibit number, and placed in 3-  
3 ring binders. Spine labels should indicate the numbers of the exhibits that are in the binders.  
4 Each set of exhibit binders should be marked as “Original.” Deposit the exhibits with the  
5 deputy clerk seven (7) days before the Pretrial Conference.

6 D. Counsel must consult with each other and with the deputy clerk at the end of  
7 each trial day and compare notes as to which exhibits are in evidence and any limitations  
8 thereon. If there are any differences, counsel should bring them promptly to the Court’s  
9 attention.

10 E. In addition to the official record exhibits, two sets of bench binders containing  
11 copies of the exhibits must be provided to the Court seven (7) days before the Pretrial  
12 Conference, one should be marked as “Chambers Copies” and the other as “Clerk’s Copies.”  
13 Each exhibit must be separated with a label divider identifying the exhibit number. (An  
14 exhibit tag is unnecessary for the bench set.) Spine labels should indicate the numbers of the  
15 exhibits that are in the binders.

16 F. Before the closing arguments, counsel must confer with the deputy clerk to  
17 make sure the exhibits in evidence are in good order.

18 G. Exhibit notebooks for the jury will not be permitted without prior permission  
19 from the Court. Publication must be by poster blow-up, overhead projection, or such other  
20 method as is allowed in the circumstances. It is permissible to highlight, circle or underscore  
21 in the enlargements as long as it is clear that it was not on the original.

## 22 CHARGING CONFERENCE

23 As the trial progresses and the evidence is heard, the Court will fashion a  
24 comprehensive set of jury instructions to cover all issues actually being tried. Prior to the  
25 close of the evidence, the Court will provide a draft final charge to the parties. After a  
26 reasonable period for review, one or more charging conferences will be held at which each  
27 party may object to any passage, ask for modifications, or ask for additions. Any instruction  
28 request must be renewed specifically at the conference or it will be deemed waived, whether

1 or not it was requested prior to trial. If, however, a party still wishes to request an omitted  
2 instruction after reviewing the Court's draft, then it must affirmatively re-request it at the  
3 charging conference in order to give the Court a fair opportunity to correct any error.  
4 Otherwise, as stated, the request will be deemed abandoned or waived.

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6 **IT IS SO ORDERED.**

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8 Dated: February 7, 2014

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10 JACQUELINE SCOTT CORLEY  
11 UNITED STATES MAGISTRATE JUDGE  
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